

# **U.S. Department of Transportation's Chief FOIA Officer Report**

The U.S. Department of Transportation (DOT) is presenting our Chief FOIA Officer's Report on a component-by-component basis. A summary of Departmental-level activity precedes the component-by-component reports.

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## Departmental Level Activity

### Getting the Message Out

The Departmental FOIA Officer promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all Departmental FOIA contacts electronically as they were issued.

The Departmental FOIA Officer created a targeted guidance document based on excerpts from the OIP guidance titled "Foreseeable Harm/Discretionary Disclosure." This document was widely distributed to employees throughout the Department.

On November 2, 2009, the Chief FOIA Officer issued a comprehensive FOIA memorandum titled "FOIA and Creating a New Era of Open Government." The memorandum was widely distributed to employees throughout the Department.

On December 14, 2009, the Department presented a well-attended FOIA briefing for all Administration officials at the Department. In addition to a discussion of the Administration's new FOIA guidance, the briefing included basic FOIA information. Hand-outs to participants included the President's FOIA Memorandum, the Attorney General's FOIA Memorandum, and the Chief FOIA Officer's FOIA Memorandum.

In daily interactions between the Department's FOIA offices and their various program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

### Discretionary Releases

The Department has, in practice, made discretionary FOIA disclosures over the years, as appropriate. However, in light of the new guidance, the Department has placed even greater emphasis on the need to make releases in all cases where foreseeable harm to one of the FOIA exemptions is not found and is encountering less resistance to that approach throughout the Department. In particular, we are finding that more information in the bodies of e-mail messages is being released, and that fewer draft documents are being withheld in their entirety, across the Department. Documents are not being withheld without an analysis of the content and, as appropriate, a line-by-line review to determine real harm. Documents previously considered exempt in their entirety have been re-reviewed, in light of the new guidance, to identify any reasonably segregable non-exempt portions that can be safely released. Explanations of withholding decisions in FOIA responses have improved as well.

The number of full grants in the Department increased (by 4.26 percent) from 37.85 percent of all initial requests processed in FY 2008 to 42.11 percent of all initial requests processed in FY 2009. The number of partial grants increased (by 0.24 percent) from 25.12 percent of all initial requests processed in FY 2008 to 25.36 percent of all initial requests processed in FY 2009. There are many factors that account for the number of full and partial releases, and the Department does not believe that, in our case, the measure is an accurate reflection of our

additional releases. For example, as we are posting more documents proactively on-line, many of the requests that would have been full releases are no longer coming through the FOIA process. More importantly, we believe the vast majority of our increased releases have been in providing more information on FOIA cases that would already have been counted as partial releases.

### Review of FOIA Programs

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations, and to encourage their continued support of the FOIA program.

### Key Roles Played by Agency Personnel

The reviews, as well as the Chief FOIA Officer's November 2, 2009 FOIA memorandum, addressed the key roles played by all agency personnel, including program offices that have responsive records and information technology staff. This idea was also highlighted in the December 14, 2009 FOIA presentation to senior officials. In addition, on February 3, 2010, the Chief FOIA Officer met with the Department's FOIA Public Liaisons to talk about these and related issues.

A recommendation was made to two components related to this area. The recommendation was for the Administrator of each of those components to direct the cooperation of program office staff with the FOIA staff (e.g., providing responsive records to the FOIA office in a timely manner).

The Department has, for many years, required that a representative of the Office of the General Counsel concur in any administrative appeal decision that withholds information. The requirement is included in the Department's FOIA regulations. To reinforce the Administration's transparency policy and presumption of disclosure, the representatives who review letters submitted for concurrence (the Departmental FOIA attorneys) have emphasized to FOIA offices that their letters must address FOIA's segregation requirement (particularly where documents are withheld in their entirety) and the Administration's foreseeable harm requirement (when a discretionary exemption is relied on).

### Technology Used

All of the Department's components use technology to varying degrees, as described in the component-by-component section of this report.

### Backlogs

From FY 2008 to FY 2009, we reduced our backlog of initial requests by 12 percent. During that same time, our backlog of appeals increased by 8 percent. At the end of FY 2009, the

Department had a backlog of 1,284 initial requests and 96 appeals. We consider these backlogs significant and are taking steps to reduce them.

We have a goal of reducing our backlog of both initial requests and appeals by 10 percent each year for the next several years. To accomplish these reductions, we have made various recommendations to the components based on the reviews of their programs. The recommendations relate primarily to streamlining, resources, and communication.

By December 30, 2010, the Departmental FOIA Officer will evaluate progress throughout the Department and make further recommendations to the Chief FOIA Officer, as appropriate.

### Timeliness

One way we are measuring timeliness is to see how many requests were answered in 1-20 days and in 21-40 days. In FY 2009, we processed 59.2 percent of initial requests in 1-20 days and an additional 20.4 percent of initial requests in 21-40 days. This is up slightly from FY 2008 (58.9 percent processed in 1-20 days and 17.6 percent processed in 21-40 days.) Our goal is to continue this upward trend. The implementation of our recommendations and milestones will make this possible.

As a result of the reviews, two recommendations were made to improve timeliness.

1. For the four DOT components not currently using multi-track processing, a recommendation was made for them to begin using multi-track processing (simple/complex/expedited), by the beginning of FY 2011.
2. OST will identify FOIA points of contact in the program offices (by June 30, 2010) and begin electronically sending search memos to the program offices by October 1, 2010.

## **FEDERAL AVIATION ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all FAA FOIA coordinators electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all FAA FOIA coordinators.

Widely distributed throughout FAA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

The FAA National FOIA Office conducted several teleconferences with FAA staff involved in the actual processing of FOIA requests and has stressed the principle of openness.

The FAA National FOIA Office conducted multiple training meetings with field coordinators with the necessity for openness as an agenda item. Additional training meetings are planned to discuss various technical FOIA issues, and openness will again be stressed as a vital component of FAA's FOIA activities.

To prompt use of discretionary releases by its decentralized offices, the FAA National FOIA Office provided a sample letter to be used when discretionary releases are made under Exemption 5.

In the daily interactions between the FAA National FOIA Office and the various FAA Headquarters and Field Offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As FAA applies the foreseeable harm standard, more information that could technically be withheld under Exemption 5 is consistently being released, either at the initial stage or at the administrative appeal stage. For example: (1) internal e-mails involving management-level officials discussing a controversial proposed agency policy related to air traffic controller fatigue were released in full at the initial request stage; (2) a deliberative document prepared by a manager related to a disgruntled and violent employee was released at the administrative appeal stage; (3) certain sections of the Enforcement Investigation Report, which arguably contain the opinions and analysis of the FAA investigators, are now routinely released; and (4) e-mails regarding safety issues for medical air ambulances that could have been withheld under Exemption 5 as deliberative were released in the initial response phase.

### Comparison of Releases:

The number of full grants increased from 37.7 percent of all initial requests processed in FY 2008 to 45.5 percent of all initial requests processed in FY 2009. The number of partial grants increased from 20.64 percent of all initial requests processed in FY 2008 to 22.5 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

FAA has taken under advisement the Chief FOIA Officer's recommendations to devote additional resources to the FOIA Headquarters Team and to revisit the level of legal review for initial FOIA requests.

Within FAA, FOIA activities are managed through use of the FOIA National Tracking System (System). In order to support the System, a dedicated IT Specialist is responsible for managing its day-to-day operation. In addition, this IT Specialist is responsible for implementing enhancements recommended by FAA's National FOIA Office necessary to ensure the smooth function of the System and to comply with statutory and regulatory FOIA requirements.

Within FAA, each office has dedicated web developers responsible for maintenance of the content of their respective office's internal and external web pages. As a result, the quality of FAA's web pages is outstanding, and material is posted in an efficient and timely manner.

After assessing the IT support provided to the FOIA National Tracking System, as well as the support provided to the FAA offices for proactively posting information on the FAA website, we have determined that the support to FAA's FOIA interests is adequate.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, FAA continues its practice of posting more and more material of interest to the public on the FAA public website.

The FAA National FOIA Office took the step of issuing a memorandum to all offices stressing the need to make more information and records proactively available. As a result of this memorandum, the FAA recently made its National Wildlife Strike Database publicly available via the FAA public website. In addition, it is now FAA's policy to proactively post audio tapes from high profile aircraft accidents and incidents where it may be reasonably

determined that there will be public interest.

In addition, the FAA's Web Council has renewed its efforts to make more information proactively available to the public via a public website and to ensure that the information is relevant and current.

#### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. FAA uses its internally-developed and supported FOIA National Tracking System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in FAA's FOIA program include: (a) in order to reduce the administrative burden of collecting FOIA fees and to simplify the payment process, requesters have the option of using pay.gov, which is the Treasury Department's electronic payment collection service; (b) some of FAA's regional and Headquarters program offices use electronic redaction tools, which significantly reduce the time to review responsive records; (c) the FOIA National Tracking System (NTS) automatically generates a letter to the requester acknowledging receipt of a particular FOIA request and containing the FOIA Control Number; (4) the FOIA NTS has document imaging capability which allows FOIA requests and other related FOIA documentation to be housed in NTS and retrieved instantly; and (5) to the extent possible, the FAA provides responses to FOIA requests electronically (i.e., via e-mail or fax).
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.

- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

## **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

### **Backlog status:**

FAA's backlog of initial requests decreased from 884 in FY 2008 to 857 in FY 2009. This represents a backlog reduction of 9.69 percent.

The date of the oldest pending initial request at the end of FY 2008 was 6/5/03; the date of the oldest pending initial request at the end of FY 2009 was 6/14/04.

FAA's backlog of appeals increased from 67 in FY 2008 to 77 in FY 2009. This represents a backlog increase of 15 percent. (Note: From October 1, 2009 to February 28, 2010, 22 of these backlogged appeals have been closed.)

The date of the oldest pending appeal at the end of FY 2008 was 5/2/03; the date of the oldest pending appeal at the end of FY 2009 was 2/5/04.

### **Backlog Reduction Steps:**

The backlog of appeals did not experience a reduction between FY 2008 and FY 2009. However, FAA has already taken steps to reverse that trend and reduce the backlog of appeals. As stated above, from October 1, 2009 to February 28, 2010, 22 of the backlogged appeals have been closed.

From FY 2003 to FY 2009, the number of administrative appeals received by the FAA has steadily increased from 39 in FY 2003 to 115 in FY 2009. In FY 2008, the FAA processed 80 administrative appeals, and in FY 2009 processed 110 administrative appeals, which represents an increase of 38 percent from the previous fiscal year. This increase in the number of appeals processed is attributable to FAA devoting additional time and resources to appeal processing activities.

In order to reduce the backlog of administrative appeals, the FAA is taking the following steps: (1) considering requiring attorney review of FOIA responses with adverse determinations, e.g., withholding records in full or in part, in order to reduce the number of administrative appeals; and (2) considering adding an additional staff member to the FAA National FOIA Office to assist in the processing of administrative appeals.

### **Steps to Improve Timeliness:**

In FY 2009, FAA answered 69 percent of requests in 1-20 days and an additional 16.3 percent of requests in 21-40 days.



The FAA National FOIA Office plans to conduct supplemental FOIA training sessions for FAA's Headquarters FOIA coordinators in the program offices. The purpose of the series of training sessions will be to reiterate the openness policy, as well as provide advice and best practices on processing FOIA requests in a timelier manner.

## **FEDERAL HIGHWAY ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all FHWA managers electronically as they were received by the Department. The President's memorandum was also posted on FHWA's external and internal FOIA home pages.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all FHWA Headquarters and field staff.

Widely distributed throughout FHWA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government." This memorandum was also posted on FHWA's internal FOIA page for easy access and reference for FOIA staff in Headquarters and field offices.

FHWA conducted a training session/webinar for its FOIA liaisons and attorneys, and topics included applying the presumption of openness and making proactive disclosures.

In the daily interactions between the FHWA Headquarters FOIA office and the various FHWA Headquarters and Field Offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As FHWA applies the foreseeable harm standard, more information is being released from drafts and e-mails as a result of an analysis of the content, and as appropriate, a line-by-line review to determine real harm. Where real harm is not found, information is released.

For example, there have been several occasions since the FOIA guidance was issued where FHWA has discretionarily released draft documents in their entirety.

#### **Comparison of Releases:**

The number of full grants increased from 51 percent of all initial requests processed in FY 2008 to 52.6 percent of all initial requests processed in FY 2009. The number of partial grants decreased from 19.2 percent of all initial requests processed in FY 2008 to 11.8 percent of all requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

FHWA has taken under advisement the Chief FOIA Officer's recommendation to re-delegate the FOIA Officer title and responsibilities from the Division Chief level to the subject matter expert level.

FHWA assessed its IT requirements and found the IT support to be sufficient. IT support to the FOIA database, the electronic reading room, and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, FHWA continues its practice of posting more and more material of interest to the public on the FHWA public website.

FHWA conducted a training session/webinar for its FOIA liaisons and attorneys, and topics included applying the presumption of openness and making proactive disclosures. FHWA then posted the training slides from this presentation on its internal FOIA page so all FHWA employees would be able to access it.

Because FHWA anticipated there would be a high public interest in highway-related projects funded by the American Recovery and Reinvestment Act (which provided significant new funding for transportation infrastructure), it proactively posted an interactive map of all of the projects. The map provides viewers with a great deal of information and allows users to drill-down to get information about specific projects.

Also, FHWA recently updated its records retention schedules to capture current record categories, then proactively made them available to the public by posting them on the FHWA public website. With the records schedules available on FHWA's public website, the public can see what types of documents that FHWA creates and maintains.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically? Yes.*
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? N/A*

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. FHWA uses its internally developed and supported FOIA Request Log System to electronically track requests. (Note: FHWA's system is also used by seven other DOT components through inter-agency agreements.)
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in FHWA's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) providing responses electronically, scanning paper copies and downloading electronic records, and submitting them to the requester via e-mail as requested; (c) the FHWA FOIA tracking system – which automatically generates a letter to the requester acknowledging receipt of a particular FOIA request and containing the FOIA Control Number; (d) the ability to add scanned images of incoming requests, which allows instant viewing of requests electronically; (e) providing FHWA's public affairs office electronic access to all incoming requests from members of the media to facilitate expedited coordination of a response.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

**Part V. Steps Taken to Reduce Backlogs and Improve Timeliness  
in Responding to Requests**

Backlog status:

FHWA's backlog of initial requests decreased from 48 in FY 2008 to 29 in FY 2009. This represents a backlog reduction of 39.58 percent.

The date of the oldest pending initial request at the end of FY 2008 was 6/14/06; the date of the oldest pending initial request at the end of FY 2009 was 6/14/06.

FHWA's backlog of appeals decreased from 11 to 10, representing a 10 percent reduction. One of the 10 backlogged appeals was closed as of March 1, 2010.

The date of the oldest pending appeal at the end of FY 2008 was 2/1/07; the date of the oldest pending appeal at the end of FY 2009 was 2/1/07.

Backlog Reduction Steps:

N/A

Steps to Improve Timeliness:

In FY 2009, FHWA answered 66 percent of requests in 1-20 days and an additional 16.77 percent of requests in 21-40 days.

To increase timeliness, the FOIA Team plans to begin scanning all incoming FOIA requests so they can be received and processed by the various Headquarters and field offices more quickly.

Although our backlog reduction is moving in the right direction, we have two current vacancies in our FOIA program. The milestones below will improve our program further:

- a. By June 30, 2010, FHWA will backfill one FOIA vacancy.
- b. By September 30, 2010, FHWA will backfill an additional FOIA vacancy.

## **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all FMCSA managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all FMCSA Headquarters and field staff.

Widely distributed throughout FMCSA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In May 2009, FOIA staff and counsel provided a "New Era of Open Government/ Proactive Disclosure" presentation to senior staff.

In daily interactions between the FMCSA FOIA staff and FMCSA program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As FMCSA applies the foreseeable harm standard, more information is consistently being released from e-mail messages, drafts, and other Exemption 5-type documents.

In Advocates for Highway and Auto Safety (AHAS) v. Federal Motor Carrier Safety Administration, civ. No. 1:07-cv-00467 (RWR) (U.S.D.C. 2007), AHAS requested that FMCSA perform a second review of any records not already disclosed in full. In performing the second review, FMCSA applied the new FOIA guidelines and released more records. AHAS was satisfied with the disclosures under this second review and the case was settled.

#### **Comparison of Releases:**

The number of full grants decreased from 30.68 percent of all initial requests processed in FY 2008 to 22.48 percent of all initial requests processed in FY 2009. The number of partial grants decreased from 61.18 percent of all initial requests processed in FY 2008 to 54.4 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and to encourage their continued support of the FOIA program. The Chief FOIA Officer made no specific recommendations to FMCSA.

FMCSA assessed its IT requirements and found the IT support to be sufficient. IT support to the electronic reading room and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, FMCSA continues its practice of posting more and more material of interest to the public on the FMCSA public website.

In May 2009, FOIA staff and counsel provided a "New Era of Open Government/Proactive Disclosure" presentation to senior staff.

An example of a recent proactive disclosure is the posting of webcasts of two listening sessions held in January 2010 related to Hours-of-Service requirements (which are designed to help prevent commercial vehicle-related accidents, fatalities and injuries by prescribing duty hours and rest periods for commercial drivers), a topic of great interest to the public.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. FMCSA uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in FMCSA's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) using its agency's Electronic Documents Management System (EDMS) to obtain records from field offices, who store and catalog documents; (c) after obtaining documents from EDMS, the documents are saved to local drives and sanitized using electronic redaction; (d) providing responses electronically; (e) the FHWA FOIA tracking system, which we use through an inter-agency agreement with FHWA, automatically generates a letter to the requester acknowledging receipt of a particular FOIA request and containing the FOIA Control Number.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Backlog status:

FMCSA's backlog of initial requests decreased from 145 in FY 2008 to 38 in FY 2009. This represents a backlog reduction of 74 percent.

The date of the oldest pending initial request at the end of FY 2008 was 9/27/07; the date of the oldest pending initial request at the end of FY 2009 was 12/3/08.

At the end of FY 2009, FMCSA had no backlogged appeals. FMCSA's backlog of appeals decreased from 6 in FY 2008 to 0 in FY 2009.

Backlog Reduction Plan:

N/A

Steps to Improve Timeliness:

In FY 2009, FMCSA answered 9 percent of requests in 1-20 days, an additional 50 percent of requests in 21-40 days, and an additional 29.56 percent of requests in 41-60 days.



The FMCSA reduced its backlog of initial requests by 74 percent between FY 2008 and FY 2009. Since the backlog has been greatly reduced, FMCSA will now be able to shift resources from the “backlog team” to the “new requests” team and handle them in a timelier manner.

## **FEDERAL RAILROAD ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all FRA managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all FRA Headquarters and field staff.

Widely distributed throughout FRA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between the FRA FOIA office and the program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

FRA applies the foreseeable harm standard as appropriate. However, the vast majority of FOIA cases received and processed by FRA involve records where redaction of personal information, such as social security numbers, is necessary. This information, protected by exemptions 6 and 7(C), is not appropriate for discretionary release.

#### **Comparison of Releases:**

The number of full grants decreased from 54 percent of all initial requests processed in FY 2008 to 46 percent of all initial requests processed in FY 2009. The number of partial grants increased from 17.8 percent of all initial requests processed in FY 2008 to 18 percent of all initial requests processed in FY 2009. The vast majority of FRA's partial releases involve redaction of personal information protected by exemptions 6 and 7(C) and thus are not appropriate for discretionary release.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

At the beginning of FY 2010, FRA made its own assessment of its program and implemented actions to correct the direction of its backlog. Steps included a thorough review of the agency's fiscal year 2009 process and a renewed focus on addressing the agency's oldest pending requests. Additional agency resources were devoted to supporting various aspects of the FOIA program (e.g., exemption 4 business information related requests and personnel information related requests) and to addressing pending appeals. To date, FRA has addressed two of the three FOIA appeals pending at the end of FY 2009, closed out many of our oldest pending requests, and reduced the backlog by more than 25 requests. Additional resources will continue to be devoted to FOIA processing throughout FY 2010.

FHWA assessed its IT requirements and found the IT support to be sufficient. IT support for its FOIA tracking system, including end-of-year reporting, the electronic reading room, and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, FRA continues its practice of posting more and more material of interest to the public on the FRA public website.

FRA is continuing efforts to expand safety related data available on its website, enabling the public to access the information without filing a FOIA request.

One particular posting recently prepared in anticipation of and in response to public and stakeholder interest in the subject matter is the Overview, Highlights and Summaries of the Rail Safety Improvement Act and Passenger Rail Investment and Improvement Act.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. FRA uses its agency's correspondence management system to track FOIA requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. FRA uses an electronic system to track, process, and report on requests. All incoming requests are scanned and then transmitted electronically to appropriate program offices to conduct a search for responsive records. Final response letters are also scanned and maintained electronically. The agency is also beginning to explore electronic redaction of FOIA exempt material as a way to reduce the burden of the redaction process and speed processing of FOIA requests. FRA also offers requesters the opportunity to pay their FOIA fees electronically via pay.gov.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Backlog status:

FRA's backlog of initial requests increased from 105 in FY 2008 to 126 in FY 2009. This represents an increase of 20 percent.

The date of the oldest pending initial request at the end of FY 2008 was 1/16/07; the date of the oldest pending initial request at the end of FY 2009 was 10/10/07.

FRA's backlog of appeals increased from 0 in FY 2008 to 3 in FY 2009.

The date of the oldest pending appeal at the end of FY 2008 was 9/2/08; the date of the oldest pending appeal at the end of FY 2009 was 1/9/09.

Backlog Reduction Steps:

Steps taken to address the FY 2009 backlog included a thorough review of the agency's fiscal year 2009 process and a renewed focus on addressing the agency's oldest pending requests. Additional agency resources were devoted to support the appeals program. For example, an additional attorney was designated to handle Exemption 6 pending appeals and another attorney was designated to handle Exemption 4 pending appeals. To date, FRA has addressed two of the three appeals pending at the end of FY 2009, closed out many of our oldest pending requests,

and reduced the overall backlog by more than 25 requests. Additional resources will continue to be devoted to FOIA processing throughout FY 2010 to ensure that additional backlog reductions are achieved.

Steps to Improve Timeliness:

In FY 2009, FRA answered 37.89 percent of requests in 1-20 days and an additional 23.64 percent of requests in 21-40 days.

The additional resources that will continue to be devoted to FOIA processing throughout FY 2010 to ensure that additional backlog reductions are achieved will also serve to improve the timeliness of FRA initial requests.

Using multi-track processing beginning in FY 2011 should help improve timeliness. The steps shown above to reduce FRA's backlog will also serve to improve the timeliness of responses.

## **FEDERAL TRANSIT ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all FTA managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all FTA Headquarters and field staff.

Widely distributed throughout FTA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between FTA's FOIA office and the program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As FTA has applied the foreseeable harm standard, more information is consistently being released in e-mail messages, drafts, and other Exemption 5-type documents.

For example, the Editor of Transit Access Report recently requested a copy of the draft reports of fixed-route Americans with Disabilities Act (ADA) review for four grantees. FTA discretionarily released the drafts, withholding only personal privacy information. That same requester has since requested and been furnished with additional draft reports.

#### **Comparison of Releases:**

The number of full grants increased from 35 percent of all initial requests processed in FY 2008 to 37 percent of all initial requests processed in FY 2009. The number of partial grants increased from 34.67 percent of all initial requests processed in FY 2008 to 34.7 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

FTA accepted a recommendation from the Chief FOIA Officer to being using multi-track processing in FY 2011.

FTA has determined that FTA's FOIA program has sufficient IT support, which includes a contractor who provides support for the FOIA program, including its FOIA home page and electronic reading room. FTA has also determined that it has sufficient IT support for the proactive posting of materials by its program offices.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, FTA continues its practice of posting more and more material of interest to the public on the FTA public website.

Since issuance of the new FOIA guidelines, FTA has proactively launched a new Livable and Sustainable Communities website. The website provides information about the Department of Transportation's role in livability and sustainable communities, the interagency partnership with the Environmental Protection Agency and the Department of Housing and Urban Development, and how FTA is supporting these exciting new initiatives. FTA has included information on transit and environmental sustainability, highlighted our efforts on affordable housing near transit, and provided case studies that can be used by transit agencies and communities around the nation as they plan to make their cities and towns more livable. In addition, FTA has provided a key webpage that lists FTA's grant programs as they relate to livability. This list includes major grant programs as well as programs that focus on specialized services, such as those serving seniors and people with disabilities.

FTA also has recently added information on its website regarding the Rail Transit Safety Initiative. Information on the website includes Secretary LaHood's statement at the Hearing on Public Transit Safety: Examining the Federal Role, and information on the proposed legislation to establish a public transportation safety program.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. FTA uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.

- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in FTA's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) electronically sending search requests to programs offices; (c) responding to FOIA responses electronically via e-mail, as appropriate; (d) automatically generating acknowledgement letters using the FHWA FOIA tracking system, which we use through an inter-agency agreement with FHWA.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Backlog status:

FTA's backlog of initial requests decreased from 27 in FY 2008 to 3 in FY 2009. This represents an 89 percent reduction.

The date of the oldest pending initial request at the end of FY 2008 was 2/4/08; the date of the oldest pending initial request at the end of FY 2009 was 8/12/09.

At the end of FY 2009, FTA had no backlogged appeals. FTA's backlog of appeals decreased from 2 in FY 2008 to 0 in FY 2009.

Backlog Reduction Steps:

N/A

Steps to Improve Timeliness:

In FY 2009, FTA processed 61.64 percent of requests in 1-20 days and an additional 29.2 percent of requests in 21-40 days.



The FTA FOIA office will begin scheduling electronic reminders to follow-up with program offices charged with searching for records. These reminders may help the FOIA office receive responsive documents from the program offices in a timelier manner. The institution of multi-track processing in FY 2011 may also result in further improvements to FTA's timeliness.

## **MARITIME ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all MARAD managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all MARAD Headquarters and field staff.

Widely distributed throughout MARAD the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between MARAD's FOIA office and the various program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As MARAD has applied the foreseeable harm standard, more information is being released in e-mail messages, drafts, and other Exemption 5-type documents.

#### **Comparison of Releases:**

The number of full grants increased from 33.8 percent of all initial requests processed in FY 2008 to 44 percent of all initial requests processed in FY 2009. The number of partial grants increased from 6 percent of all initial requests processed in FY 2008 to 13.9 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

MARAD accepted the following recommendations from the Chief FOIA Officer: (1) to re-delegate the FOIA Officer title and responsibilities from the Division Chief level to the subject matter expert level; and (2) to have the MARAD Administrator direct program office staff to cooperate with the FOIA staff (e.g., searching for and providing responsive documents).

An assessment was made of IT support to MARAD's FOIA program, and some of the support was found lacking. MARAD uses FOIAXpress to manage its FOIA requests; however, MARAD's FOIA reporting is currently inadequate. MARAD will work with FOIAXpress and IT staff to address the issues. IT support for the electronic reading room is inadequate, and the Chief FOIA Officer has raised the issue with senior management in MARAD. The agency's main website appears to have adequate IT support, with a great deal of information proactively posted.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, MARAD continues its practice of posting more and more material of interest to the public on the MARAD public website.

One example is that MARAD has an excellent Virtual Office of Acquisition containing a great deal of acquisition/contract related information and records that is available without submitting a FOIA request.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. MARAD uses FOIAXpress to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in FTA's FOIA program include: (a) using FOIA software (FOIAXpress) to track, scan, redact, and process FOIA requests; (b) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (c) responding to FOIA responses electronically via e-mail, as appropriate.

- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

#### **Backlog Status:**

MARAD's backlog of initial requests increased from 170 in FY 2008 to 194 in FY 2009. This represents an increase of 12 percent.

The date of the oldest pending initial request at the end of FY 2008 was 4/12/05; the date of the oldest pending initial request at the end of FY 2009 was 4/12/05.

In DOT's FY 2009 annual report, MARAD's backlog of appeals was reported as 2. This would represent an increase from 0 in FY 2008 to 2 in FY 2009. However, MARAD did not actually have any appeals pending at the end of FY 2009 – the 2 appeals shown as pending at the end of FY 2009 was a reporting error.

#### **Backlog Reduction Steps:**

MARAD has accepted the Chief FOIA Officer's recommendation to re-delegate the FOIA Officer title and responsibilities from the Division Chief level to the subject matter expert level. We believe this streamlining will allow us to more efficiently process requests and reduce our backlog.

#### **Steps to Improve Timeliness:**

In FY 2009, MARAD processed 2.5 percent of requests in 1-20 days and no additional requests in 21-40 days.

MARAD accepted the Chief FOIA Officer's recommendation to have the MARAD Administrator direct program office staff to cooperate with the FOIA staff (e.g., searching for and providing responsive documents). We believe implementing this recommendation, along with implementing the recommendation to re-delegate the FOIA Officer title and responsibilities down to the subject matter expert level, will improve MARAD's timeliness in responding to requests.

## **NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all NHTSA managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all NHTSA Headquarters and field staff.

Widely distributed throughout NHTSA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between NHTSA's FOIA office and the program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

The FOIA supervisor monitors FOIA responses to ensure that the presumption of openness is being applied.

#### **Statistics/Examples:**

As NHTSA has applied the foreseeable harm standard, more information is consistently being released in e-mail messages, drafts, and other Exemption 5-type documents.

For example, in response to the new FOIA guidelines, NHTSA discretionarily released drafts related to tire aging reports in their entirety to a FOIA requester.

#### **Comparison of Releases:**

The number of full grants decreased from 57 percent of all initial requests processed in FY 2008 to 43 percent of all initial requests processed in FY 2009. The number of partial grants decreased from 35.78 percent of all initial requests processed in FY 2008 to 18.84 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

NHTSA accepted a recommendation from the Chief FOIA Officer to begin using multi-track processing in FY 2011.

NHTSA assessed its IT requirements and found the IT support to be sufficient. IT support to the electronic reading room and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, NHTSA continues its practice of posting more and more material of interest to the public on the NHTSA public website.

To increase proactive postings in its website, NHTSA's FOIA Public Liaison has assigned a staff member to routinely monitor activity within the NHTSA program offices to identify additional documents that may be of interest to the public.

After receiving a number of FOIA requests on the CARS program (formerly called "Cash for Clunkers"), NHTSA proactively posted a database containing raw data related to the program. The data included information that had previously been requested through FOIA, as well as additional data fields that may be useful to the public.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. NHTSA uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in NHTSA's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) exploring electronic

redaction as a time saver; (c) responding to FOIA responses electronically via e-mail, as appropriate; (d) automatically generating acknowledgement letters using the FHWA FOIA tracking system, which we use through an inter-agency agreement with FHWA; (e) providing records to FOIA requesters in the desired format (e.g., CDs, e-mail.)

- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Backlog status:

NHTSA's backlog of initial requests decreased from 22 in FY 2008 to 3 in FY 2009. This represents a reduction of 85 percent.

The date of the oldest pending initial request at the end of FY 2008 was 9/3/08; the date of the oldest pending initial request at the end of FY 2009 was 7/16/09.

NHTSA had no backlogged appeals in FY 2008 or FY 2009.

Backlog Reduction Steps:

N/A

Steps to Improve Timeliness:

In FY 2009, NHTSA processed 57.97 percent of requests in 1-20 days and an additional 34.78 percent in 21-40 days.

During FY 2010, a senior FOIA specialist retired. While the position was being advertised, NHTSA recruited a detailee and pulled other staff to fill the gap. These steps were taken so that the timeliness of NHTSA responses could be improved further.

The implementation of multi-track processing in FY 2011 may improve NHTSA's timeliness even further.

## **OFFICE OF INSPECTOR GENERAL**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all OIG managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all OIG Headquarters and field staff.

Widely distributed throughout OIG the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between the OIG's FOIA office and the program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As the OIG has applied the foreseeable harm standard, more information is being released in e-mail messages, drafts, and other information subject to discretionary disclosure.

Prior to the new FOIA guidance, OIG withheld internal administrative information, such as case numbers, using Exemption 2 ("Low 2"). The OIG now routinely releases information it had previously withheld under that exemption.

#### **Comparison of Releases:**

The number full grants increased from 3.19 percent of all initial responses processed in FY 2008 to 13 percent of all initial requests processed in FY 2009. The number of partial grants increased from 42.55 percent of all initial requests processed in FY 2008 to 43 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and encourage their continued support of the FOIA program. The Chief FOIA Officer made no OIG-specific recommendations.



OIG assessed its IT requirements and found the IT support to be sufficient. IT support to the electronic reading room and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, the OIG continues its practice of posting more and more material of interest to the public on its public website.

To increase proactive postings on its website, the OIG's FOIA Public Liaison now routinely monitors activity within the OIG to identify additional documents that may be of interest to the public.

Some recent examples of proactive disclosures that were made without the need for a FOIA request include: (a) the OIG's response to a Congressional request from Senator Pryor; (b) work that OIG has initiated on FAA's oversight of American Airlines' maintenance programs; and (c) OIG's report regarding oversight of the Highway Bridge Program and the National Bridge Inspection Program.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. OIG uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in the OIG's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) using electronic redaction software; (c) responding to FOIA responses electronically via e-mail, as appropriate; (d) providing records to FOIA requesters in the desired format (e.g., CDs, e-mail.)

- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

##### **Backlog status:**

OIG's backlog of initial requests decreased from 72 in FY 2008 to 15 in FY 2009. This represents a decrease of 79 percent.

The date of the oldest pending initial request at the end of FY 2008 was 3/27/06; the date of the oldest pending initial request at the end of FY 2009 was 3/27/06.

OIG's backlog of appeals increased from 1 in FY 2008 to 3 in FY 2009.

The date of the oldest pending appeal at the end of FY 2008 was 10/24/07; the date of the oldest pending appeal at the end of the FY 2009 was 2/4/09.

##### **Backlog Reduction Steps:**

The OIG reduced its backlog of initial requests by 79 percent from FY 2008 to FY 2009. While resources were focused on reducing the backlog of initial requests, the OIG's processing of appeals slipped. Resources that typically worked on appeals were shifted to help with reducing the backlog. Now that the backlog is reduced, resources have been redirected toward appeals. The OIG anticipates a reduction in its backlog of appeals during the fiscal year.

##### **Steps to Improve Timeliness:**

In FY 2009, the OIG processed 16.54 percent of requests in 1-20 days, an additional 9.35 percent in 21-40 days, and an additional 11.51 percent in 41-60 days.

OIG's backlog of initial requests was reduced by 79 percent between FY 2008 and FY 2009. Since the backlog has been greatly reduced, OIG will now be able to shift resources from working on the backlogs to working on the new requests and handle them in a timelier manner.

## OFFICE OF THE SECRETARY

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all OST managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all OST Headquarters and field staff.

Widely distributed throughout OST the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between OST's FOIA office and the various program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As OST has applied the foreseeable harm standard, more information is consistently being released in e-mail messages, drafts, and other Exemption 5-type documents.

For example, there have been several occasions since the FOIA guidance was issued where OST has discretionarily released draft documents in their entirety. This included unsigned drafts, documents clearly marked draft, and draft documents with annotated comments.

#### **Comparison of Releases:**

The number of full grants increased from 20.8 percent of all initial requests processed in FY 2008 to 28.4 percent of all initial requests processed in FY 2009. The number of partial grants decreased from 20.34 percent of all initial requests processed in FY 2008 to 19.76 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

OST accepted the following recommendations from the Chief FOIA Officer: (1) to identify points of contact in each OST program office by June 30, 2010; (2) to begin sending search memos to the OST program offices electronically by October 1, 2010; and (3) to fill a detail position in the OST FOIA office by May 30, 2010.

OST assessed its IT requirements and found the IT support to be sufficient. IT support to the electronic reading room and the agency's main website is excellent. Documents identified for proactive posting are posted by IT staff in a timely manner.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, OST continues its practice of posting more and more material of interest to the public on its public website.

One step that has recently been taken to increase proactive disclosure has been done in conjunction with the OST's electronic reading room. As part of the electronic reading room certification process, the OST FOIA attorney reminds program offices every 6 months to post not only reading room records, but other records of potential interest to the public on its main website.

An example of a recent proactive disclosure on OST's website is the Aviation Consumer Protection and Enforcement Page, which recently posted information about tarmac delays and other consumer issues and frequently asked questions about the rule governing the air travel of persons with disabilities.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. OST uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in OST's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) exploring electronic redaction software; (c) responding to FOIA responses electronically via e-mail; (d) automatically generating acknowledgement letters using the FHWA FOIA tracking system, which we use through an inter-agency agreement with FHWA.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

##### **Backlog Status:**

OST's backlog of initial requests decreased from 63 in FY 2008 to 15 in FY 2009. This represents a reduction of 75 percent.

The date of the oldest pending initial request at the end of FY 2008 was 2/3/06; the date of the oldest pending initial request at the end of FY 2009 was 5/27/08.

OST's backlog of appeals increased from 0 in FY 2008 to 1 in FY 2009.

The date of OST's pending appeal at the end of FY 2009 was 6/30/09.

##### **Backlog Reduction Steps:**

Although OST's backlog decreased, we plan to fill a detail position in its FOIA office during FY 2010. This will free up a FOIA specialist's time to work on particularly complex older cases and enable us to continue our backlog reduction. For appeals, additional FOIA attorneys will be used as necessary to address any backlog of appeals in FY 2010.

##### **Steps to Improve Timeliness:**

In FY 2009, OST processed 61.97 percent of requests in 1-20 days and 9.58 percent in 21-40 days.

We plan to increase timeliness by completing the following milestones:

- a. By June 30, 2010, OST will identify contact points in each program office.
- b. By October 1, 2010, OST will begin sending search memos to program offices electronically.

## **PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all PHMSA managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all PHMSA Headquarters and field staff.

Widely distributed throughout PHMSA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

PHMSA periodically sends the FOIA Memorandum from President Obama and the guidance from Attorney General Holder as a reminder to staff.

PHMSA continues to have discussions with Headquarters and Regional personnel to remind staff of the presumption to disclose.

The PHMSA FOIA office has reminded its program offices that the agency has discretion to waive Exemption 7 and that it may be appropriate to do so in certain cases.

#### **Statistics/Examples:**

As PHMSA has applied the foreseeable harm standard, more information is consistently being released in e-mail messages, drafts, and other Exemption 5-type documents.

PHMSA receives many FOIA requests from the public for records relating to PHMSA's pipeline and hazardous materials investigations and enforcement cases. Since the new FOIA Guidance, PHMSA has made an increasingly greater amount of records available to the public. PHMSA has waived Exemption 5 more often for e-mails containing certain internal deliberative discussions. PHMSA has also released e-mails that could be protected by Exemption 2 ("Low 2") involving administrative matters being discussed between PHMSA personnel relating to an enforcement matter.

#### **Comparison of Releases:**

The number of full grants decreased from 55 percent of all initial requests processed in FY 2008 to 44.69 percent of all initial requests processed in FY 2009. The number of partial grants increased from 13 percent of all requests processed in FY 2008 to 14.39 percent of all initial requests processed in FY 2009.

## **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and to encourage their continued support of the FOIA program. The Chief FOIA Officer made no PHMSA-specific recommendations.

PHMSA's FOIA Manager provided the head of PHMSA's IT department with the President's and Attorney General's FOIA memoranda and maintains a close working relationship with him. The IT department has been responsive to the needs of the FOIA program. Since the new guidance, PHMSA has proactively posted records on its website – promptly handled by the IT department.

PHMSA continues to have the support of its IT department for assistance in updating PHMSA's electronic reading room and FOIA home page.

## **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, PHMSA continues its practice of posting more and more material of interest to the public on its public website.

PHMSA leadership received the President's and Attorney General's memoranda and has taken seriously the direction to proactively disclose records. Managers have identified records for proactive disclosure and have instructed staff to post more records on the website.

For example, PHMSA proactively posted the Action Plans for the improvement of PHMSA's Hazardous Materials Special Permits and Approvals process. PHMSA also recently added pipeline regulatory interpretations and Special Permits and Waivers.

## **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:



- *Does your agency track requests electronically?* Yes. PHMSA uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

#### Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of ways technology is used in PHMSA's FOIA program include: (a) PHMSA receives FOIA requests via e-mail directly from the requester, in addition to receiving requests by regular mail and fax; (b) PHMSA's FOIA Program Manager often communicates with requesters via e-mail and provides the FOIA Program Manager's address, e-mail address, and fax number on the FOIA web page to allow requesters immediate access; (c) PHMSA created a shared FOIA file on the network server allowing PHMSA's regional offices to upload responsive records, which saves the regional staff time and resources that would be needed for duplication and postal or courier fees; (d) after the case has been closed, the case file, including the released, withheld and/or redacted records are electronically stored; (e) FOIA requesters have the opportunity to pay FOIA fees electronically through pay.gov; (f) exploring the use of electronic redaction software.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

#### Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

#### **Backlog Status:**

PHMSA's backlog of initial requests decreased from 46 in FY 2008 to 4 in FY 2009. This represents a reduction of 91 percent.

The date of the oldest pending initial request at the end of FY 2008 was 1/18/05; the date of the oldest pending initial request at the end of FY 2009 was 5/14/09.

At the end of FY 2009, PHMSA had no backlogged appeals. PHMSA's backlog of appeals decreased from 2 in FY 2008 to 0 in FY 2009.

Backlog Reduction Steps:

N/A

Steps to Improve Timeliness:

In FY 2009, PHMSA answered 56.8 percent of requests in 1-20 days and an additional 11.36 percent in 21-40 days.

PHMSA reduced its backlog of initial requests by 91 percent between FY 2008 and FY 2009. Since the backlog has been greatly reduced, PHMSA will now be able to focus on new requests and handle them in a timelier manner. In addition, we are coordinating earlier with hazmat and pipeline attorneys for input on records, enabling us to make determinations more quickly.

## **RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all RITA managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all RITA Headquarters and field staff.

Widely distributed throughout RITA the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

Emphasized the Open Government initiative and the importance of transparent operations in staff meetings.

In daily interactions between RITA's Headquarters office and Volpe FOIA office and their respective program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As RITA has applied the foreseeable harm standard, more information is consistently being released in e-mail messages, drafts, and other Exemption 5-type documents.

Prior to January 2009, RITA routinely withheld records identified as "For Official Use Only." After January 2009, the agency made a concerted effort to release as much information as possible from these documents given the new FOIA guidance.

#### **Comparison of Releases:**

The number of full grants decreased from 55.55 percent of all initial requests processed in FY 2008 to 43.75 percent of all initial requests processed in FY 2009. The number of partial grants decreased from 20 percent of all initial requests processed in FY 2008 to 12.5 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and to encourage their continued support of the FOIA program. The Chief FOIA Officer made no RITA-specific recommendations.

After assessing its IT requirements, RITA identified a single IT support employee to support the agency's FOIA website. IT support to the electronic reading room and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, RITA continues its practice of posting more and more material of interest to the public on its public website.

RITA's Deputy Chief Counsel forwarded the President's and Attorney General's FOIA guidance to program office staff, and has reminded them to identify and post documents with public interest on a regular basis.

For example, the Bureau of Transportation Statistics recently posted a video overview of the transportation Services Index, data related to tarmac times, and a summary of airline on-time performance year-to-date 1995-2009.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. RITA uses FHWA's internally developed and supported FOIA Request Log System to electronically track requests.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in RITA's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) scanning responsive documents into PDF files and responding by e-mail to reduce mail costs and time; (c) for large volume requests, using CDs and other electronic means to reduce paper costs and provide the records in a more usable format; (d) using the e-mail system where possible to provide acknowledgement letters and status updates.
- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* N/A

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Backlog Status:

RITA's backlog of initial requests decreased from 1 in FY 2008 to 0 in FY 2009.

RITA had no backlog of appeals in FY 2008 or FY 2009.

N/A

Backlog Reduction Steps:

N/A

Steps to Improve Timeliness:

In FY 2009, RITA answered 79.16 percent of requests in 1-20 days and an additional 18.75 percent of requests in 21-40 days.

RITA's timeliness in FY 2009 was very good; FOIA staff will strive for continued excellence in this area.

## **ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION**

### **Part I: Steps Taken to Apply the Presumption of Openness**

#### **Steps Taken:**

Promptly forwarded the President's FOIA Memorandum, the Attorney General's Memorandum, and the Office of Information Policy's (OIP) FOIA guidance to all SLSDC managers electronically as they were received by the Department.

Distributed the Department's "Foreseeable Harm/Discretionary Disclosure" hand-out to all SLSDC Headquarters and field staff.

Widely distributed throughout SLSDC the Chief FOIA Officer's FOIA memorandum titled "FOIA and Creating a New Era of Open Government."

In daily interactions between SLSDC's FOIA office and the program offices, there is an emphasis on openness relative to specific FOIA requests or issues.

#### **Statistics/Examples:**

As the SLSDC has applied the foreseeable harm standard, more information is consistently being released in e-mail messages, drafts, and other Exemption 5-type documents.

SLSDC rarely uses the discretionary exemptions. However, the FOIA staff and program office staff are mindful of the need to make discretionary disclosures whenever appropriate.

#### **Comparison of Releases:**

The number of full grants increased from 45 percent of all initial requests processed in FY 2008 to 60 percent of all initial requests processed in FY 2009. The number of partial grants decreased from 25 percent of all initial requests processed in FY 2008 to 20 percent of all initial requests processed in FY 2009.

### **Part II: Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

The Chief FOIA Officer directed the Departmental FOIA Officer to conduct comprehensive reviews of each component's FOIA programs. The reviews were conducted in January and February 2010. When the reviews were completed, the Chief FOIA Officer met with senior level official(s) in each of the components to discuss findings and any component-specific recommendations and to encourage their continued support of the FOIA program.

SLSDC accepted a recommendation from the Chief FOIA Officer to begin using multi-track processing in FY 2011.

SLSDC assessed its IT requirements and found the IT support to be sufficient. IT support to the the electronic reading room, and the agency's main website is excellent. Documents identified for proactive posting are promptly posted by IT staff.

### **Part III: Steps Taken to Increase Proactive Disclosure**

Outside of the FOIA process, the SLSDC continues its practice of posting material of interest to the public on its website.

When the President's and Attorney General's FOIA guidance was issued, SLSDC distributed it to its staff, and has since reminded them to be vigilant about looking for opportunities to post additional information of public interest on its website.

Examples of information currently posted on SLSDC's public website include a seaway resource library, interactive tours of the seaway, videos, documents, and a great deal of other information related to the seaway.

### **Part IV: Steps Taken to Greater Utilize Technology**

Electronic receipts of requests:

- *Does your agency currently receive requests electronically?* Yes.
- *If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically?* N/A

Electronic tracking of requests:

- *Does your agency track requests electronically?* Yes. SLSDC uses Microsoft Excel to track its small number of requests electronically.
- *If not, what are the current impediments to your agency utilizing a system to track electronically?* N/A

Electronic processing of requests:

- *Does your agency use technology to process requests?* Yes. Some examples of the use of technology in SLSDC's FOIA program include: (a) offering FOIA requesters the opportunity to pay FOIA fees electronically via pay.gov; (b) scanning responsive documents into PDF files and responding by e-mail to reduce mail costs and time; (c) for large volume requests, using CDs and other electronic means to reduce paper costs and

provide the records in a more usable format; (d) using the e-mail system where possible to provide acknowledgement letters and status updates.

- *If not, what are the current impediments to your agency utilizing technology to process requests?* N/A

Electronic preparation of the Annual FOIA Report:

- *Does your agency utilize technology to prepare your agency Annual FOIA Report?* Yes.
- *If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report?* No.

#### **Part V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

Backlog Status:

SLSDC had no backlog of initial requests or appeals in FY 2008 or FY 2009.

N/A

Backlog Reduction Steps:

N/A

Steps to Improve Timeliness:

In FY 2009, SLSDC answered 80 percent of requests in 1-20 days and no additional requests in 21-40 days.

The implementation of multi-track processing in FY 2011 may increase the SLSDC's timeliness. The SLSDC will continue to make timeliness a priority.